

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Tyrone Roberson, #191327,)	Civil Action No. 2:20-2904-RMG
)	
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
South Carolina Department of Corrections,)	
)	
Defendant.)	
)	

Before the Court is the Magistrate Judge's Report and Recommendation ("R & R") recommending that Plaintiff's motion be denied and the action be dismissed without prejudice. (Dkt. No. 4.) No objections were made to the R & R.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight and the responsibility to make a final determination remains with the Court. *See, e.g., Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where the plaintiff objects to the R & R, the Court "makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* In the absence of objections, the Court reviews the R & R to "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) ("In the absence of objection . . . we do not believe that it requires any explanation.").

Plaintiff, a state prisoner proceeding *pro se*, submitted a "Rule 59(e) Motion of Objection to Judge Milton G. Kimpson's July 8, 2020 Order of Dismissal to Alter or Amend Judgment for a

New Civil Trial by Jury.” (Dkt. No. 1.) It was docketed as a federal action complaint, but appears to challenge the final decision in a state administrative proceeding (Docket No. 19-ALJ-04-0651-AP). As the Magistrate Judge notes, this filing appears to have been submitted to the District Court in error, as the motion does not resemble a pleading and is more properly governed by the South Carolina Appellate Court Rules. The Court can find no clear error on the face of this recommendation.

For the foregoing reasons, the Court **ADOPTS** the R & R (Dkt. No. 4) as the order of the Court, **DENIES WITHOUT PREJUDICE** the motion for lack of subject matter jurisdiction (Dkt. No. 1) and **DISMISSES WITHOUT PREJUDICE** this action in its entirety.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

December 1, 2020
Charleston, South Carolina